October 13, 2009

**OFFICE OF THE HEARING EXAMINER**
**CITY OF RENTON**

**REPORT AND RECOMMENDATION**

APPELLANT: Robin Bales
PO Box 3015
Renton, WA 98056

Amber Properties LLC Sign Code Restrictions Appeal
LUA-09-098, AAD

After reviewing the Appellant's written requests for a hearing and examining available information on file, the Examiner conducted a public hearing on the subject as follows:

***The following minutes are a summary of the September 21, 2009 hearing.***
***The legal record is recorded on CD.***

The hearing opened on Tuesday, September 21, 2009, at 9:42 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

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| **Exhibit No. 1:** Hearing Examiner's file containing letter of interpretation, the original appeal letter and notification of this hearing. | **Exhibit No. 2:** Proposal for sign for Key Bank Plaza |
| | |

Parties Present:

Jennifer Henning, Current Planning Manager
Ann Nielsen, Assistant City Attorney

Robin Bales (Appellant)

Robin Bales, PO Box 3015, Renton, WA 98056 stated that he would like to have the decision reconsidered based on three items; for a multi-tenant project, retail and office rely on exposure. When the sign is limited to 10-feet in height it limits how many tenants can be listed on the sign. Further, on NE 4th where this is located it appears to be late to set a precedent for sign height when all the signs on NE 4th where all properties west of Duvall have been built out with the exception of this parcel and the neighboring property, there is only one sign that meets the 10-foot restriction, that being for the US Post Office. All the rest of the signs along that stretch of road exceed the height requirement. Key Bank, the tenant for the building that is being built is very upset about the new height restrictions.

The Examiner stated that if this property were located in downtown Seattle or even downtown Renton, exposure would be limited even for a much larger building. There recently was another variance request for signage that was denied in this same area.

Jennifer Henning, Planning Manager stated that the property Mr. Bales represents is located on NE 4th Street in the Highlands and is at the corner of Bremerton Avenue (136th Ave SE). The property is known as The Key Plaza which had a site plan approval several months ago. As part of that approval, there were no sign plans submitted or evaluated. Therefore, there is no grandfathering condition. The property is zoned Commercial Arterial (CA Zone). In December of last year the City Council adopted Ordinance 5437, which became effective in December 2008 that required all development within the CA Zone be subject to Urban Design District D standards and guidelines. Within District D (RMC 4-3-100J1e) states that freestanding ground related monument signs, with the exception of primary entry signs, shall be limited to five feet above finished grade, including the support structures. Within the Code a primary entry sign was not defined, therefore an Administrative Determination or Interpretation that clarified what was meant, that Determination was filed on August 12, 2009. It defined primary entry sign and established an allowable height that would be in conjunction with the Design Guidelines. This allowed the entry sign to go to 10-feet in height.

The Examiner inquired why that particular height was established. It appears that this is something that the City Council should have determined. It obviously was an oversight that was not designed into the Code, what is confining Mr. Vincent, it appears to be fairly arbitrary.

Ms. Henning stated that pole signs are no longer allowed. At one time pole signs were allowed to go up to 40 feet as the limit in the Zone. There are no freestanding signs that today are allowed to go that height.

It is an effort and a concession to allow this sign to be built at a height of 10-feet. There are minimum standards and guidelines. Standards are required, guidelines are optional. This is a minimum standard District D.

Regarding Council action on these Administrative Policy Code Interpretations, at the bottom there is a portion called Code Amendments Needed to Implement the Determination. This is what goes on the Docket that the Council and Planning Commission would look at in a cycle when they get to a certain point, most likely next year. This is suggested code changes, it does not mean that they will be adopted but this would convert the interpretation to code.

The sign regulations are in a separate portion of the code and Mr. Bales sign consultant looked through the sign regulations and was led to believe that he only had to look there, the Urban Design is in a different section, it is not properly cross-referenced. They are currently trying to take care of that situation.

Council has been trying to raise the quality of the City through high-quality development and in that regard they chose to apply the Design Standards within the Urban Design portion of the code to all development in the CA Zone. Design District D was in effect in other portions of the City, but became effective for all CA Zone properties with this Ordinance.
The site plan was approved in October 2008 but it did not include any provisions for signs. They could review signs as part of the site plan review, but there were no sign proposals at that time. If the project had come in with a sign proposal in October of 2008, they would have been vested and able to have the pole sign.

A series of e-mails were received asking if the sign would fit within primary entry sign regulations, it was noted that there was no definition for primary entry sign and so a determination would have to be issued. However, a height of 32-feet would not begin to meet the Design District standards.

Prior to the Design District there was a height limit of 40-feet or the height limitation of the zone, whichever is less, for primary entry signs. In the CA Zone the height limit was 50-feet. The request for a 32-foot sign would have met that criteria.
Mr. Bales stated that he believes this restriction negatively impacts business, any retail relies heavily on exposure. He did not think that a multi-tenant can get the exposure it requires to run a business. There is a

second building that has not been constructed, phase 2 of the project, which makes it harder to sell when there is no exposure on the street. Key Bank is right on the street, so he did not feel that it would hurt them as much, the property owner is the one that is negatively impacted in this situation.

Ms. Nielsen noted that under (4-1-080) Mr. Vincent is required under that provision, where unclear or conflict, to issue an Administrative Interpretation, under that particular provision he did undertake that action. The City is somewhat in concurrence with the Examiner that perhaps 10-feet is too much. It was an effort at some sort of concession trying to keep in mind the issues raised by Mr. Bales while at the same time trying to remain faithful to the City Council's intentions. The scope of Mr. Vincent's action is what it is.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 10:15 am.

## FINDINGS, CONCLUSIONS & RECOMMENDATION

Having reviewed the record in this matter, the Examiner now makes and enters the following:

**FINDINGS:**

1. The appellant, Robin G. Bales representing Amber Properties LLC, filed an appeal of Code Interpretation of a provision of the sign code limiting the height of primary entry signs.

2. The appeal was filed in a timely manner.

3 The appellant is developing a property located along NE 4th Street in the City of Renton. The site is located on the southwest corner of the intersection NE 4th and Bremerton Avenue NE.

4. The applicant had intended to install a sign on a pylon base. According to the appellant the sign would have been 32 feet tall. Its text and tenant information is not relevant to this hearing. The lease or ownership issues are also not relevant to this hearing.

5. The City Council adopted Ordinance 5437 in December, 2008. It became effective in December, 2008. Those regulations required all development within the CA Zone be subject to Urban Design District D standards and guidelines. Those guidelines limiting monument signs to five feet (5') are part of that enactment.

6. One of the major concerns of the appellant is that shorter signs limit the commercial exposure of businesses in his proposed complex. He indicated that taller signs already exist in the area and create a commercial disadvantage for tenants of his complex. While this is true, it is also true in larger complexes and malls where not every business can command a premier location either in the complex or on a sign of limited size. Tenants in larger office buildings are similarly disadvantaged.

7. City Council intentionally changed its codes in relation to signs with its December 2008 enactment. Testimony showed that the City wants smaller, less intrusive signs and business corridors with a more aesthetic appearance. Limiting the size, number or location of signs are some of the methods for achieving a more aesthetic appearance and a less cluttered corridor.

8. The code was specifically amended so that freestanding ground related monument signs shall be limited to five feet above finished grade with the exception of primary entry signs. The Code did not define "primary entry sign."

9. The Director noted that an inquiry regarding the permissibility of the appellant's proposed 32-foot tall, double pole sign prompted his decision to examine the Code and issue a code interpretation. That decision was to define a "primary entry sign" and to permit it to be ten feet (10') tall.

10. The decision contained the following language:

> "Although the code does not stipulate a definition of "primary entry signs" its intent is not to allow a tall freestanding pole sign, as evidenced by RMC Section 4-3-100J1c which states: 'Prohibited signs included: Pole signs...'"
>
> "The definition of 'primary entry sign' shall be interpreted as follows: A type of freestanding sign, other than a pole sign, of 10 feet or less in height, in which the sign is in contact with the ground, has a solid base anchor, and is independent of any other structure and serves the function of directing customers to the main entrance of a multi-tenant building or multi-building complex." (Page 2 Vincent decision)

11. The decision then goes on to suggest needed amendments to permanently address the deficient code sections.

12. The following code sections apply to this decision:

> 4-3-100J: Intent: To provide a means of identifying and advertising businesses; provide directional assistance; encourage signs that are both clear and of appropriate scale for the project; encourage quality signage that contributes to the character of the Urban Center and the Center Village; and create color and interest.
>
> 1. Minimum Standards for Districts 'C' and 'D':
>
> a. Signage shall be an integral part of the design approach to the building.
>
> b. Corporate logos and signs shall be sized appropriately for their location.
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> c. Prohibited signs include (see illustration, subsection J3a of this Section):
>
> i. Pole signs;
>
> ii. Roof signs;
>
> iii. Back-lit signs with letters or graphics on a plastic sheet (can signs or illuminated cabinet signs). Exceptions: Back-lit logo signs less than ten (10) square feet are permitted as are signs with only the individual letters back-lit.
>
> d. In mixed use and multi-use buildings, signage shall be coordinated with the overall building design.
>
> e. Freestanding ground-related monument signs, with the exception of primary entry signs, shall be limited to five feet (5') above finished grade, including support structure. All such signs shall include decorative landscaping (ground cover and/or shrubs) to provide seasonal interest in the area surrounding the sign. Alternately, signage may incorporate stone, brick, or other decorative materials as approved by the Director.

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4-4-100 SIGN REGULATIONS:

A. PURPOSE:

It is the purpose of these regulations to provide a means of regulating signs so as to promote the health, safety, morals, general welfare, social and economic welfare and esthetics of the City of Renton. Signs are erected to provide information for the benefit and convenience of pedestrians and motorists and should not detract from the quality of urban environment by being competitive or garish. Signs should complement and characterize the environment which they serve to give their respective areas a unique and pleasing quality. The regulations of this Code are not intended to permit any violations of any other lawful ordinance. The purposes of this Section are implemented through the establishment of standards for the type, placement, scale, and construction of signs which varies by use, zoning district, or City Center sign district.

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4-1-080 INTERPRETATION:

A. ADMINISTRATIVE INTERPRETATION:

1. General: The Community and Economic Development Administrator, or designee, is hereby authorized to make interpretations regarding the implementation of unclear or contradictory regulations contained in this Title. Any interpretation of the Renton Title IV Development Regulations shall be made in accordance with the intent or purpose statement of the specific regulation and the Comprehensive Plan. Life, safety and public health regulations are assumed to prevail over other regulations.

2. Zoning Conflicts: In the event that there is a conflict between either the development standards or special development standards listed in chapter 4-2 RMC, Zoning Districts – Uses and Standards, and the standards and regulations contained in another Section, the Community and Economic Development Administrator, or designee, shall determine which requirement shall prevail in accordance with the intent or purpose statement of the specific regulation and the Comprehensive Plan. Life, safety and public health regulations are assumed to prevail over other regulations. (Ord. 5153, 9-26-2005; Ord. 5450, 3-2-2009)

B. CONFLICTS AND OVERLAPS:

This Title is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Title and another regulation, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 4071, 6-1-1987; Amd. Ord. 5153, 9-26-2005)

C. INTERPRETATION OF REQUIREMENTS:

In interpreting and applying the provisions of this Title, the requirements herein shall be:

1. Considered the minimum for the promotion of the public health, safety, morals and general welfare;

2. Liberally construed in favor of the governing body; and

3. Deemed neither to limit nor repeal any other powers granted under State statutes. (Ord. 4071, 6-1-1987; Amd. Ord. 5153, 9-26-2005)

D. MORE RESTRICTIVE/HIGHER STANDARDS TO GOVERN:

Wherever any regulation in this Title imposes higher or more restrictive standards than are required in any other statute or regulation, the provisions of this Title shall govern. Wherever the provisions of any other statute or regulation impose higher or more restrictive standards, the provisions of such other statute or regulation shall govern. (Ord. 4404, 6-7-1993; Amd. Ord. 4963, 5-13-2002; Ord. 5153, 9-26-2005)

E. TERMINOLOGY:

When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word “shall” is always mandatory. (Ord. 4007, 7-14-1986; Amd. Ord. 5153, 9-26-2005)

**CONCLUSIONS:**

1. The appellant has the burden of demonstrating that the decision of the City Official was either in error, or was otherwise contrary to law or constitutional provisions, or was arbitrary and capricious (Section 4-8-110(E)(7)(b). The appellant has demonstrated that the action of the City should be reversed but that might not achieve what the appellant set out to achieve. The appeal is granted.

2. Arbitrary and capricious action has been defined as willful and unreasoning action in disregard of the facts and circumstances. A decision, when exercised honestly and upon due consideration of the facts and circumstances, is not arbitrary or capricious (Northern Pacific Transport Co. v Washington Utilities and Transportation Commission, 69 Wn. 2d 472, 478 (1966).

3. An action is likewise clearly erroneous when, although there is evidence to support it, the reviewing body, on the entire evidence, is left with the definite and firm conviction that a mistake has been committed. (Ancheta v Daly, 77 Wn. 2d 255, 259 (1969). An appellant body should not necessarily substitute its judgment for the underlying agency with expertise in a matter unless appropriate.

4. The problem with the Director's decision is that there is no basis for its conclusions. As was noted at the hearing what drove the decision to limit signs to 10 feet tall? Why not 15 feet? 14 feet? 8 feet or 5 feet? Clearly, the determination was intended to fill in a "blank" in the code which did not address "primary entry signs." While the Director is "authorized to make interpretations regarding the implementation of unclear or contradictory regulations contained in this Title" (Section 4-1-080A1) the decision in this case has no basis for the height limits created in this interpretation. There is no interpretation in this case but an absolute number, 10 feet. Ten feet is not a value derived from any specific authority or provision.

5. What is clear is that the Director was correct when stating that the provision's intent is not to allow tall,

freestanding pole signs. The Council clearly amended the Code to bring the CA Zone within the Design Guidelines and outlaw tall pole signs. The fact that the corridor in question already may be cluttered with tall signs overshadowing any sign permitted to the appellant is not an issue. The Council is free to change the Code to further its aims of a more gracious streetscape even if it takes years to achieve. While it may seem arbitrary to suddenly impose such limits, the Council in order to achieve its goals has to set a limit on height and set a time for such change. The Council action limited the height of signs prior to the appellant's submission of its sign and the Code is applicable to that proposed sign. The appellant's proposed sign definitely does not comply with Code or the Council's intent. A 32-foot tall sign is definitely prohibited by Code.

6. The decision was too expansive and goes beyond mere interpretation. While the interpretation fills in a blank, actually, two, by defining "primary entry sign" and then providing a height limit for such signs, it is impossible to glean such language from the Code provisions that are being interpreted in this case. This office is left with no doubt that the underlying decision was in error, although it was generously granting the appellant some relief from the Code's sign height limitations.

7. The decision below should be reversed. This office has found that the decision below was inappropriate and the decision below is reversed, but that does not permit signs in excess of five (5') feet.

**DECISION:**

The decision is reversed.

ORDERED THIS 13th day of October 2009

FRED J. KAUFMAN
HEARING EXAMINER

TRANSMITTED THIS 13th day of October 2009 to the following:

Mayor Denis Law
Jay Covington, Chief Administrative Officer
Julia Medzegian, Council Liaison
Gregg Zimmerman, PBPW Administrator
Alex Pietsch, Economic Development
Jennifer Henning, Development Services
Stacy Tucker, Development Services
Renton Reporter
Dave Pargas, Fire
Larry Meckling, Building Official
Planning Commission
Transportation Division
Utilities Division
Neil Watts, Development Services
Janet Conklin, Development Services

Pursuant to Title IV, Chapter 8, Section 100Gof the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., October 27, 2009**. Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This

request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of $75.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., October 27, 2009.**

**If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.**

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.